

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

ORIGINAL

76-7337

United States Court of Appeals

For the Second Circuit.

THOMAS HUGHES,
Plaintiff-Appellant,

against

LOUIS J. FRANK, Commissioner of Police of the Nassau County Police Department, and the NASSAU COUNTY POLICE DEPARTMENT,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

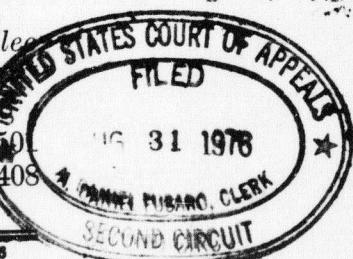
APPENDIX.

HARTMAN & ALPERT

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300 Old Country Road
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UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

-----X

THOMAS HUGHES,

Plaintiff-Appellant,

against

LOUIS J. FRANK, Commissioner of Police of the Nassau
County Police Department, and the NASSAU COUNTY
POLICE DEPARTMENT,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

-----X

DOCKET ENTRIES.

<u>DATE</u>	<u>PROCEEDINGS</u>
1975	
Nov. 25	Complaint filed. Summons issued
Dec. 5	Summons ret and filed/executed.
1976	
Jan. 5	Notice of motion ret 1-9-76 for an order dismissing the complaint filed. (mg)
Jan. 16	Deft's memorandum of law filed.
Feb. 18	Affidavit of Allen R. Morganstern in opposition to defts' motion to dismiss filed with Memorandum of law.

DOCKET ENTRIES

<u>DATE</u>	<u>PROCEEDINGS</u>
Jun. 3	By NEAHER, J. - Memorandum and Order dtd 6-2-76 directing Clerk to enter judgment dismissing complaint filed. (copies mailed).
Jun. 3	Judgment that the plaintiff take nothing of the defendant and that the complaint is dismissed filed.
Jul. 9	Notice of appeal filed. Copy mailed to C of A.
Aug. 9	Entire file certified and handed to Francis V. Parisi to be transmitted to C of A. mg
Aug. 12	Acknowledgment rec'd from C of A for receipt to file.

COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

THOMAS HUGHES,

Plaintiff

COMPLAINT

-against-

CIVIL ACTION FILE NO.

LOUIS J. FRANK, Commissioner of Police
of the Nassau County Police Department
and the NASSAU COUNTY POLICE DEPARTMENT

Defendants

- - - - - X

The plaintiff, complaining of the Defendants, by his attorneys,

HARTMAN & ALPERT, ESQS., does herein allege:

FIRST: This is an action seeking to redress the deprivation under color of statute, ordinance, regulation, custom or usage of a right, privilege or immunity secured to the Plaintiff by the Fourteenth Amendment of the Constitution of the United States, by Title 42, United States Code, Chapter 21, and under Section 9 of the Military Selective Service Act of 1967, and for other injuries arising under the law and statutes of the State of New York, and Plaintiff therefore invokes the pendant jurisdiction of this court.

SECOND: The jurisdiction of this court is invoked under 28 United States Code, Section 1343, Subdivision 3, this being an action authorized by law to redress the deprivation, under the ordinance, custom and usage, of a right, privilege and immunity secured to the Plaintiff by the Fourteenth Amendment to the Constitution of the United States as well as pursuant to Section 9 of the Military Selective Service Act of 1967.

COMPLAINT

THIRD: That at all of the times hereinafter mentioned, Plaintiff, THOMAS HUGHES, was and still is a member of the Police Department of the County of Nassau, State of New York.

FOURTH: That at all times hereinafter mentioned, defendant, LOUIS J. FRANK, was the duly appointed Commissioner of Police, County of Nassau, State of New York, and therefore responsible for the administration and operation of the NASSAU COUNTY POLICE DEPARTMENT.

FIFTH: That the Plaintiff herein, THOMAS HUGHES, completed a four (4) year tour of active duty with the United States Navy, receiving an honorable discharge as well as satisfactorily fulfilling a period of the time in the inactive reserves.

SIXTH: That the Plaintiff herein, THOMAS HUGHES, is currently not a member of any reserve unit, however, desires to join an authorized Naval Reserve Unit, said affiliation needing to be effective on or before May, 1976 in order for Plaintiff herein to retain his rank of "E-5".

SEVENTH: That pursuant to Article VI, Rule 15 of the Rules and Regulations of the Nassau County Police Department (a copy of which is annexed hereto and made a part hereof and marked Exhibit 'A'),

"A member of the Force or Department is prohibited from affiliating with any organization or body, the constitution or regulations of which would in any way exact prior consideration, and prevent him from performing his departmental duties..."

EIGHTH: The defendants have interpreted the above referenced rule to mean that defendants must first give prior approval to a member of the department before said member can join a military reserve unit, and that should a member either join a military reserve unit without first notifying, as well as obtaining said approval, that said action would result in the bringing of charges against such individual for a violation of the Rules and Regulations

COMPLAINT

of the Nassau County Police Department, and thereby subject said individual to possible fine, and/or termination of employment.

NINTH: That Plaintiff, THOMAS HUGHES, has requested of the defendants that he be permitted to join, as soon as possible, a military reserve unit, the defendants advising the plaintiff that they would not grant permission at this time, but rather would place plaintiff's name on a waiting list, defendants advising the plaintiff that it is defendant's policy only to have a limited number of its personnel at any one time be involved with a military reserve unit, and that the quota at present has been met and that plaintiff would have to wait his turn.

TENTH: That it is the desire of the plaintiff herein to join a military reserve unit as soon as possible, such a position being readily available to him at the present, said affiliation at the present time also resulting in his ability to retain his military rank of "E-5" since said affiliation would occur prior to said May, 1976 expiration date as referred to above.

ELEVENTH: That defendants have continued to deny to plaintiff the granting of their authorization for him to join said military reserve unit.

TWELFTH: That by reason of the foregoing, plaintiff has been deprived of his constitutional guarantees as set forth in the Fourteenth Amendment of the Constitution of the United States, and in addition, by defendants actions, they have violated Section 9 of the Military Selective Service Act of 1967 as well as Title 42, United States Code, Chapter 21.

WHEREFORE, plaintiff demands judgment against the defendants declaring that Article VI, Rule 15 of the Rules and Regulations of the Nassau County Police Department, as currently interpreted by defendants in that defendants require of plaintiff prior approval before plaintiff can join a military

6a

COMPLAINT

reserve unit, be in fact declared illegal, unconstitutional and thus null and void, as well as to declare that defendants shall not, in any way, deprive plaintiff from participating in a military reserve unit, and for such other and further relief as to this court may seem just and proper.

Dated: Mineola, New York
November 24, 1975

HARTMAN & ALPERT
Attorneys for Plaintiff
Office & P. O. Address
300 Old Country Road
Mineola, New York 11501
(516) 742-9000

7a

COMPLAINT

NASSAU COUNTY RULES & REGULATIONS

Article VI-

Rule 15. A member of the Force or Department is prohibited from affiliating with any organization or body, the constitution or regulations of which would in any way exact prior consideration, and prevent him from performing his departmental duties; and he shall immediately advise the Commissioner of Police of any change in his classification in relation to Selective Service, or status concerning his membership in any Federal or State military organization or reserve program.

JNG:hc

NOTICE OF MOTION TO DISMISS COMPLAINT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

THOMAS HUGHES,

Plaintiff,

Civil Action
File No. 75C 1983

v.

LOUIS J. FRANK, Commissioner of Police
of the Nassau County Police Department
and the NASSAU COUNTY POLICE DEPARTMENT,
Defendants.

NOTICE OF MOTION

-----X

S I R S:

PLEASE TAKE NOTICE that upon the complaint in this action, the affidavit of Louis J. Frank and the memorandum of law of the defendants, the undersigned will move this Court before the Honorable Edward R. Neaher, in Courtroom No. 2, at the United States District Court House, 225 Cadman Plaza East, Brooklyn, New York, on the 9th day of January, 1976 at 10:00 o'clock of the forenoon of that day or as soon thereafter as counsel can be heard, for an order pursuant to Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, dismissing the complaint against the defendants on the grounds that the Court lacks jurisdiction over the subject matter of this action and the complaint fails to state a claim upon which relief can be granted and for such other and further relief as the Court may deem just and proper.

Dated: Mineola, New York
December 31, 1975

Yours, etc.,

JOHN F. O'SHAUGHNESSY
County Attorney of Nassau County
Attorney for Defendants

by:

James N. Gallagher
Deputy County Attorney
Nassau County Executive Building
Mineola, N.Y. 11501 (516)535-3604

B

9a

NOTICE OF MOTION TO DISMISS COMPLAINT

TO:

HARTMAN & ALPERT, ESQS.
Attorneys for Plaintiff
300 Old Country Road
Mineola, New York 11501

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT

for the

EASTERN DISTRICT OF NEW YORK

x

THOMAS HUGHES

Plaintiff

AFFIDAVIT

v.
LOUIS J. FRANK, Commissioner
of Police of the Nassau County
Police Department, and the
NASSAU COUNTY POLICE DEPARTMENT

Defendants

x

STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

LOUIS J. FRANK, being duly sworn, deposes and says; your deponent is the Commissioner of the Nassau County Police Department, located at 1490 Franklin Avenue, Mineola, New York, and a named defendant herein.

Your deponent is familiar with the facts herein based upon personal information and belief and upon a review of the files and records maintained by the Nassau County Police Department.

This Affidavit is submitted in opposition to plaintiff's attack on the validity and constitutionality of Article 6, Rule 15 of the Rules and Regulations of the Nassau County Police Department, and for the purpose of clarifying for the record the exact nature of the defendants' position in this

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION

matter. Effective May 15, 1975, your deponent imposed a maximum quota on the number of members of the Nassau County Police Force entitled to serve in the Military Reserves at any one time. This maximum quota was set at no more than one hundred (100) members at any one time. This limit was reached after a careful examination in which the competing interests of service to the reserves were balanced against service to the County of Nassau.

Each Reservist is entitled to be excused from duty with pay for a total of thirty (30) days per year for Reserve Duty. With one hundred (100) men on Military Leave for thirty (30) days, this will result in a loss to the County of three thousand (3,000) days per year. Since the average police officer works approximately two hundred (200) days per year, this loss can be equated with the equivalent of the County's police force being reduced by fifteen (15) men. At the same time, the County would be required to pay these individuals as if services had been rendered at a cost which approximates four hundred thousand dollars (\$400,000.) per year. If the County were forced to shoulder a greater burden than that imposed by one hundred (100) police officers in the Military Reserves, it would result in a severe hardship to the police department and it would significantly undermine our enforcement efforts.

The primary obligation of any police officer is service to the citizens of Nassau County. In accord with this are the coverage requirements which the Nassau County Police Department is required to meet. In these days of fiscal austerity, these obligations are becoming increasingly more difficult to manage.

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION

The Nassau County Police Department is presently operating under a hiring freeze. The result is that the County's present Police Force is fewer in number than the Force of 1973. This is despite the fact that the population of the County which the Force patrols has been rising annually. The Police Department cannot remedy the problem by hiring temporary police officers to cover for the officers on reserve duty because the law makes no provision which would enable the County to adopt such a measure, and as one of the solutions to this problem, a reasonable quota of one hundred (100) was established on the number of members of the Police Force in the Military Reserves at any one time.

Article 6, Rule 15 is not a blanket prohibition on a member of the Police Force joining a Military Reserve unit. The fact that the Nassau County Police Department has one hundred (100) members who are affiliated with reserve units illustrates this point. In numerous police department administrative hearings, Article 6, Rule 15 has been construed to mean that prior to joining a Reserve Unit, a member of the Force must secure the permission of the Police Commissioner. There are restraints on the Commissioner's discretion in this matter in that the only time when his permission will be refused is when the quota of one hundred (100) has been filled.

In view of the above considerations, it is your deponent's belief that neither is the maximum quota of one hundred (100) unreasonable nor is the provision of the Rules and Regulations as construed constitutionally

AFFIDAVIT OF LOUIS J. FRANK IN SUPPORT OF MOTION

defective. The social utility of the system to both the County and the people it serves far outweighs any inconvenience to the individual.



LOUIS J. FRANK

Sworn to before me this

17th day of December 1975.



Dennis R. Barry

NOTARY PUBLIC, State of New York
No. 20-4409449
Commission Expires March 30, 1977

AFFIDAVIT OF ALLEN R. MORGANSTERN IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-X

THOMAS HUGHES,

Plaintiff,
-against-

LOUIS J. FRANK, Commissioner of Police
of the Nassau County Police Department,
and the NASSAU COUNTY POLICE DEPARTMENT,

AFFIDAVIT IN OPPOSITION
TO DEFENDANTS' MOTION
TO DISMISS

Civil Action File No.
75 C 1983

Defendants.

-X
STATE OF NEW YORK :

COUNTY OF NASSAU :ss.:

ALLEN R. MORGANSTERN, being duly sworn, deposes and says:

1. That he is an attorney duly licensed to practice law in the State of New York and is an associate of the law firm of HARTMAN & ALPERT, the attorneys for the plaintiff herein and is fully familiar with all the facts and circumstances heretofore had herein and makes this affidavit in opposition to defendants' motion seeking an Order pursuant to Rule 12(b)(1) and (b)(6) of the Federal Rules of Civil Procedure dismissing plaintiff's Complaint on the grounds that the Court lacks jurisdiction over the subject matter of this action and the Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff opposes the relief sought by defendants in their motion papers as being unfounded in fact as well as law and upon the grounds more fully set forth in the accompanying Memorandum of Law.

WHEREFORE, plaintiff respectfully submits to this Court that for the reasons set forth in plaintiff's accompanying Memorandum of Law, defendants' motion seeking an Order pursuant to Rule 12(b)(1) and (b)(6) of

AFFIDAVIT OF ALLEN R. MORGANSTERN IN OPPOSITION TO MOTION

Federal Rules of Civil Procedure dismissing plaintiff's Complaint on the grounds that the Court lacks jurisdiction over the subject matter of this action and the Complaint fails to state a claim upon which relief can be granted, should in fact be denied in every respect.

151
ALLEN R. MORGANSTERN

Sworn to before me this

18th day of February, 1976.

151
BRUCE D. ALPERT
Notary Public, State of New York
No. 30-6058025
Qualified in Nassau County
Commission Expires March 30, 1976

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT.FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

* JUN 3 1976 *

TIME A.M. _____
P.M. _____

THOMAS HUGHES,

75 C 1983

Plaintiff,

MEMORANDUM
AND
ORDER

- against -

LOUIS J. FRANK, Commissioner of
Police of the Nassau County
Police Department and the NASSAU
COUNTY POLICE DEPARTMENT,

Defendants.

M'PAPED

M'FILMED

APPEARANCES:

HARTMAN & ALPERT, Esqs.
Attorneys for Plaintiff
By ALLEN R. MORGANSTERN, Esq.JAMES M. CATTERSON, JR., Esq.
County Attorney of Nassau County
Attorney for Defendants
By JAMES N. GALLAGHER, Esq.
Deputy County Attorney

NEAHER, District Judge.

Plaintiff Thomas Hughes, a police officer employed by the Nassau County Police Department, brought this action under the Civil Rights Act, 42 U.S.C. §1981, et seq., and Section 9 of the Military Selective Service Act of 1967, 50 U.S.C. App. §459, seeking a declaration that Article VI,

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

Rule 15 of the Rules and Regulations of the Nassau County Police Department ("Rule 15") is unconstitutional. He claims that Rule 15 denies him the equal protection of the laws by arbitrarily barring him from membership in a federal military reserve organization. Defendants have moved to dismiss the complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief may be granted. F.R.Civ.P. 12(b)(1) and (6).

The complaint alleges that prior to his police employment, plaintiff completed a four-year tour of active duty with the United States Navy, received an honorable discharge and satisfactorily fulfilled a period of time in the inactive reserves. He now desires to join an authorized Naval Reserve Unit and has requested defendants' approval to affiliate. His request has been refused based on defendants' interpretation of Rule 15, which provides:

A member of the Force or Department is prohibited from affiliating with any organization or body, the constitution or regulations of which would in any way exact prior consideration, and prevent him from performing his departmental duties; and he shall immediately advise the Commissioner of Police of any change in his classification in relation to Selective Service, or status concerning his membership in any Federal or State military organization or reserve program.

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

Plaintiff further alleges defendants advised him, at the time of his request, that their policy under the Rule was to limit the number of police officers in the reserves to 100, that the quota already had been met, and that plaintiff would have to wait his turn. No allegation has been made that defendants' refusal of permission was activated by any personal or class-based discriminatory animus.

The Police Commissioner's affidavit in support of the motion to dismiss states that the purpose of Rule 15 is to secure the performance of the police force's primary obligation, service to the citizens of Nassau County. The Police Commissioner avers that the County incurs a substantial loss of services as a result of the time each reservist spends on reserve duty. A reservist is entitled to military leave, with pay, for up to 30 days each year. Even with the present quota of 100, it is calculated, Nassau County loses 3,000 man days of police services per year, equivalent to a reduction of the force by 15 men, at a yearly cost of \$400,000. Defendants also emphasize the County's tight fiscal situation by pointing out that a hiring freeze currently is in effect and no temporary officers can be hired to fill the gap.

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

Plaintiff challenges these economic considerations, asserting that the present loss in manpower is statistically insignificant when compared with the total police personnel, over 3,800 officers. Plaintiff also contrasts other known losses in police manpower not so circumscribed, e.g., days off for donating blood, not using sick leave and receiving meritorious commendations, and concludes that no rational basis for the Rule has been shown.

The controlling question here, however, is not whether the police department can afford to let plaintiff join the Naval Reserve but whether it is constitutionally obliged to do so. The answer to that question turns upon whether Rule 15 amounts to an arbitrary restriction upon a fundamental right of plaintiff as a public employee, see Shapiro v. Thompson, 394 U.S. 618 (1968), or has a rational relation to a valid State objective, see McGowan v. Maryland, 366 U.S. 420 (1960).

Rule 15 is not free from ambiguity on its face with respect to a prohibition on "membership in any Federal or State military organization or reserve program," especially in view of the acknowledged permissible quota of

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

officers who may participate in such a program. Nor does the Rule expressly confer the quota power exercised. There is no dispute, however, that defendants interpret the Rule to mean, first, that before a police officer may join a military reserve unit, he must obtain the permission of the police commissioner. An officer's affiliation without such approval could result in charges being brought against him for violating police department rules and regulations. The Police Commissioner, secondly, interprets the Rule to give him the authority to impose a quota on the number of police officers entitled to serve in the military reserves at any one time. Accordingly, the constitutionality of the Rule must be judged by the manner in which it is applied. See Broadrick v. Oklahoma, 413 U.S. 601, 617-18 (1973); Law Students Research Council v. Wadmond, 401 U.S. 154, 162-63 (1971); Schwartz v. Romnes, 495 F.2d 844, 852 (2 Cir. 1974).

Plaintiff here is basically seeking to hold his police employment while demanding the right to be free of a regulation that prevents his participation in activities which conflict with the performance of his police obligations. It would appear to be undeniable, as defendants contend, that the County's interest in maintaining an adequately staffed

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

police force to insure the public safety and enforcement of the laws overrides any interest an individual police officer may have in joining the reserves. The Commissioner's concern over loss of manpower due to the number of enlistments in the military reserves is clearly legitimate and the quota system established to deal with the problem cannot be considered irrational or arbitrary. Nor can it be said that the Commissioner exercises standardless discretion in permitting or refusing affiliation with a reserve unit, his power being limited, as it is, to implementing the quota system. That system, moreover, is manifestly a reasonable accommodation between the County's interest in conserving its police manpower and the national interest in training military reservists for possible defense needs.

Plaintiff's challenge to Rule 15 rests upon an assumption the court cannot accept. As one federal court recently put it, "[c]ourts have never seen fit to declare that the right to seek employment, unfettered by government regulation, is fundamental, and in fact, courts have consistently refused to employ this strict compelling interest standard for purely economic matters." Habron v. Epstein,

____ F.Supp. ____, 44 U.S.L.W. 2517 (D. Md. April 6, 1976)

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

(three-judge court). Public employees such as plaintiff cannot expect "that the claim of a member of a uniformed civilian service based on the 'liberty' interest protected by the Fourteenth Amendment must necessarily be treated for constitutional purposes the same as a similar claim by a member of the general public." Kelley v. Johnson, ____ U.S. ___, 96 S.Ct. 1440, 1446 (1976). On the undisputed facts before the court, it is plain that plaintiff will be unable to demonstrate "that there is no rational connection between the regulation, based as it is upon [defendant's] method of organizing its police force, and the promotion of safety of persons and property." Id. at ___, 96 S.Ct. at 1446.

The court having considered the affidavits of the parties on defendants' motion, summary judgment is granted /1 dismissing the complaint. Rule 12(c), F.R.Civ.P.

SO ORDERED.

The Clerk of the Court is directed to enter judgment in favor of the defendants and against the plaintiff dismissing the complaint.

Edward R. Neaher

Dated: Brooklyn, N.Y.
June 2, 1976.

U. S. D. J.

MEMORANDUM AND ORDER BY NEAHER, D. J., GRANTING
DEFENDANTS' MOTION TO DISMISS COMPLAINT

Footnote

1

Plaintiff's claim of denial of equal protection of the laws in violation of the civil rights statute, 42 U.S.C. §1981, et seq., is sufficient to invoke federal jurisdiction under 28 U.S.C. §1333, in this action for declaratory relief. See Wood v. Strickland, 95 S.Ct. 992 (1975). See also Kurlan v. Callaway, 510 F.2d 274 (2 Cir. 1974).

JUDGMENT DISMISSING COMPLAINT APPEALED FROM.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THOMAS HUGHES,

JUN 3 1976

Plaintiff,

- against -

LOUIS J. FRANK, Commissioner of
Police of the Nassau County
Police Department and the NASSAU
COUNTY POLICE DEPARTMENT,

JUDGMENT

75-C-1983

Defendants.

X M'F'D

A memorandum and order of Honorable Edward R. Neaher, United States District Judge, having been filed on June 3, 1976, granting summary judgment and dismissing the complaint pursuant to Fed.R.Civ.P. 12(c) and directing the Clerk to enter judgment for the defendant and against the plaintiff, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant and the complaint is dismissed.

Dated: Brooklyn, New York
June 3, 1976

Levius Orgel
Clerk

NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

THOMAS HUGHES,

Plaintiff

Civil Action # 75 C 1983

-against-

LOUIS J. FRANK, Commissioner of Police of
the Nassau County Police Department and the
NASSAU COUNTY POLICE DEPARTMENT,

NOTICE OF APPEAL

Defendant

- - - - - X

S I R S :

PLEASE TAKE NOTICE that the Plaintiff, THOMAS HUGHES, herein appeals to
the United States Court of Appeals for the Second Circuit from the judgment and
order made by the Honorable Edward R. Neaher on the 2nd day of June, 1976, and
entered herein on the 3rd day of June, 1976.

DATED: Mineola, New York
July 2, 1976

Yours, etc.,

HARTMAN & ALPERT
Attorneys for Plaintiff
Office & P. O. Address
300 Old Country Road
Mineola, New York 11501
(516) 742-9000

TO: JAMES M. CATTERSON
County Attorney of Nassau County
Nassau County Executive Building
One West Street
Mineola, New York 11501

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STATE OF NEW YORK, :
COUNTY OF DELAWARE, : SS:

I, William Finch, being duly sworn do depose and say: that I am over the age of twenty-one years and employed by The Reporter Company, Inc., Printers at Walton, New York.

That on the 30th day of August, 1976, at the request of Hartman & Alpert, Esqs., Attorneys at Law, 300 Old Country Road, Mineola, New York, I served three copies of an Appendix entitled "Thomas Hughes vs Louis J. Frank" on James Catterson, Esq., Nassau County Attorney,

by delivering said 3 copies in postpaid wrapper at 3:30 p. m. on this day, to United Parcel Service at Walton, New York, addressed to the above as follows:

James Catterson, Esq., Nassau County Attorney, Nassau County Executive Building, Mineola, New York,

and that there is a regularly established delivery route between Mineola, New York, and Walton, New York.

William Finch

Sworn to before me
this 30th day of August, 1976.

Joan W. Clapperton
Notary Public

JOAN W. CLAPPERTON

NOTARY PUBLIC

DEL. CO., STATE OF NEW YORK
COMMISSION EXPIRES MAR. 30, 1978